

Procedural Steps for Processing Tribal Applications for TAS Eligibility for Regulatory Programs Under the Clean Air Act¹

The U.S. Environmental Protection Agency process for reviewing a federally-recognized tribe's (tribe or tribal) application for treatment in the same manner as a state (TAS) eligibility to administer a regulatory program under the Clean Air Act (CAA) consists of four steps. They are:

- **Step 1: The Tribe Submits an Application.**² Tribes are encouraged to work with EPA in developing their TAS eligibility applications to administer CAA programs. Drafts or components of the application may be shared with EPA before being formally submitted to the Agency. After EPA examines the tribe's application, EPA may request additional information.

Step	Description	Responsibility
1A	Pre-application discussions and technical assistance if appropriate	Joint Tribe-EPA
1B	EPA review of pre-application materials (if requested)	
1C	Tribe submits application to EPA	
1D	EPA notifies the tribe of receipt of the application, and, as needed, requests additional information from the tribe, within 30 days of receipt of the application	EPA (Region)
1E	Tribe submits additional information (if applicable)	Tribe

- **Step 2: EPA Review.** EPA reviews the initial or revised application to verify that it is complete, i.e. includes all the basic information required for an eligibility determination. When EPA determines it has received a complete, initial application, it notifies the tribe that the application is complete, and provides notice to appropriate governmental entities regarding the application.

Step	Description	Responsibility
2A	EPA reviews application and determines if the application is complete	EPA (Region)
2B	EPA notifies all appropriate governmental entities of the application and how it identifies the reservation's boundaries, and of any assertions regarding tribal authority over non-reservation areas, within 30 days of receipt of initial, complete application	EPA (Region)
2C	EPA notifies the tribe, in writing, that the application is complete no later than when EPA provides the notification in Step 2B	EPA (Region)

¹ This document sets out the procedures EPA intends to follow in processing TAS applications under the CAA. EPA retains the discretion to deviate from this process when appropriate. This document imposes no binding legal requirements.

² Special provisions of law may apply to tribes in the State of Oklahoma. Tribes in Oklahoma should contact EPA for more information on TAS eligibility for EPA regulatory programs.

Attachment F

- **Step 3: Comment Period (if needed).** Appropriate governmental entities and the public have 30 days to comment regarding the reservation's boundaries and tribal authority over non-reservation areas. *See* 40 CFR 49.9(b). EPA provides the comments to the tribe, which has the opportunity to respond. Where there is a dispute concerning tribal authority that EPA cannot promptly resolve, it may approve the portion of an application addressing undisputed areas. *See* 40 CFR 49.9(e).

Step	Description	Responsibility
3A	Appropriate governmental entities and the public have the opportunity to comment regarding the reservation's boundaries or tribal authority over non-reservation areas; comments are generally due within 30 days	Commenters
3B	EPA provides the comments to the tribe within 30 days of the close of the comment period	EPA (Region)
3C	The tribe reviews the comments and may respond	Tribe

- **Step 4: Final TAS Eligibility Decision.** Based on its review of all the material – including the application, the administrative record, comments submitted, and any tribal responses – if EPA is prepared to approve the tribe's TAS application, the EPA team produces a draft decision document, including a response to comments for final review within the Agency.³ The regional office notifies the tribe in writing of EPA's approval of the tribe's TAS application. The approval letter and the decision document are transmitted to the tribe. A determination by the EPA Regional Administrator concerning the boundaries of a reservation or tribal jurisdiction over non-reservation areas applies to all future CAA applications from the tribe, with no further notice to governmental entities unless the application presents different jurisdictional issues or significant new factual or legal information relevant to jurisdiction. *See* 40 CFR 49.9(f).

Step	Description	Responsibility
4A	EPA prepares decision document and response to comments	EPA (Team)
4B	EPA regional official signs decision document	EPA (Region)
4C	EPA notifies tribe of decision within 30 days of signature	EPA (Region)

³ If the EPA Regional Administrator determines that a tribe meets the requirements of 40 CFR 49.6 for purposes of a CAA provision, the tribe is eligible to be treated in the same manner as a state with respect to that provision. The eligibility will extend to all areas within the exterior boundaries of the tribe's reservation, as determined by the EPA Regional Administrator, and any other areas the EPA Regional Administrator has determined to be within the tribe's jurisdiction. *See* 40 CFR 49.9(g).